IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.912 OF 2004

Todkar Group).. Appellant

versus

Bhapkar Petrol Depot and others).. Respondents

Mr.N.Shimpi with Mr.P.K.Dhakephalkar for the Appellant.

Mr.N.V.Walawalkar with Mr.S.A.Sawant for Respondent No.1.

Mr.S.R.Rege for Respondent No.7.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 1ST NOVEMBER 2004

P.C. :

. The Appellant had filed an earlier Appeal From Order No.635 of 2003 under which there was a dispute as to what was the extent of the suit property. Staircases had been constructed by the Appellant which according to Respondent No.1 i.e. the Plaintiff fell within its property and therefore this Court after making certain observations has held thus :

> "11. In the above backdrop, impugned order will have to be quashed and set aside and the matter will have to be remitted back to the trial Court for consideration afresh in the light of the observations made herein. It is, thus, made clear that after demarcation of the suit property, if the stair cases, which were constructed as per the sanctioned plan, are found not to have their opening on the suit

> plot of land held by the plaintiff on lease, then it would be open for appellant/defendant No.1 to re-construct the staircases as per sanctioned plan otherwise different consequences would flow.
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> 12. Mr.Ketkar, learned counsel for the Pune Municipal Corporation states that the Corporation shall have no objection, if after demarcation of the respective plots, the defendant No.1 decides to re-construct the stair cases subject to the orders on Exh.5. In that event, no fresh permission of the Corporation shall be necessary.
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> 13. In the light of the above discussion, it would be open for the plaintiff to apply for measurement of its own plot along with plot of defendant No.1. It would be open for the trial Court to consider such prayers, if made in its proper perspective in the light of the observations made herein. However till such time, parties to the suit shall maintain status-quo."

2. In the present Appeal from Order, the trial Court has restrained the Defendant Nos.1 to 3 from entering the suit premises and from keeping any construction material on the suit property. It is clarified that in the event the staircase is reconstructed after following the procedure laid down in Appeal From Order No.635 of 2003 and in accordance with the Rules after sanction by the Pune Municipal Corporation, no action will be taken against the Appellant.

3. Appeal From Order disposed of accordingly.

4. In view of the disposal of the Appeal From

Order, nothing survives in Civil Application No.1147 of 2003 and the same is disposed of accordingly.